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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAKELA MITCHELL, individually and
on behalf of all others similarly situated,

Civil Action 1:22-cv-07878

Plaintiff,

CLASS ACTION

v.

FREY BROTHERS, INC.,

Defendant.

_____/

PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT

Plaintiff, Lakela Mitchell, hereby moves pursuant to Fed. R. Civ. P. 55(a), for entry of Default by the Clerk as to Defendant, Frey Brothers, Inc., on the basis that Defendant failed to serve a response to Plaintiff's Complaint within the time permitted under Fed. R. Civ. P. 12(a) and Defendant has not otherwise appeared in this action.

1. Plaintiff filed her Class Action Complaint against Defendant on September 14, 2022 [ECF No. 1].
2. Defendant's registered agent is listed as Harvard Business Services, Inc. on the Delaware Secretary of State website.
3. The Complaint and summons were properly served upon Defendant on September 19, 2022, when the process server delivered the Complaint and summons to the authorized agent of Defendant. [ECF No. 4] attached as **Exhibit A**.
4. Service of process was properly effectuated under Federal Rules of Civil Procedure 4(h) and 4(e) because Defendant's registered agent was served.

5. Pursuant to Fed. R. Civ. P. 12(a), Defendant was required to serve a responsive pleading on or before October 10, 2022.
6. Defendant has not filed any response to the Plaintiff's Complaint, Defendant has not entered an appearance in this matter, nor has Defendant sought additional time within which to respond or otherwise appeared in this action.
7. Under Fed. R. Civ. P. 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."
8. In light Defendant's failure to appear, plead, or otherwise respond, Fed. R. Civ. P. 55(a) requires that the Clerk enter default.
9. Accordingly, the Plaintiff respectfully requests that the Clerk enter default against Defendant.

WHEREFORE, Plaintiff respectfully requests that the Clerk enter default against Defendant.

Date: November 9, 2022

Respectfully submitted,

Shamis & Gentile, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.

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*Counsel for Plaintiff and the
proposed class.*

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner. A copy of this Motion has also been mailed to the registered agent for Frey Brothers, Inc.

By: /s/ Andrew Shamis
Andrew J. Shamis, Esq.
New York Bar No. 5195185

Application DENIED without prejudice. Pursuant to Local Rule 55.1 and Attachment A of the Undersigned's Individual Practices, Plaintiff must first. *inter alia*, request a certificate of default from the Clerk of Court before moving for default judgment. Plaintiff's deadline to move for default is **Wednesday, November 16, 2022**, or else show cause why the complaint should not be dismissed for failure to prosecute. The initial pretrial conference scheduled for November 18, 2022 is ADJOURNED *sine die*.

SO ORDERED.



Date: 11/14/2022

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE